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ABSTRACT

A comparative study of constitutions and governments in world history is a key to deeper understanding of the U.S. Constitution. While many countries have constitutions, the United States is among a minority of nations in today's world that has a constitutional government. Many nations' constitutions truly guarantee few protections of individual rights and liberties. Instruction about the U.S. Constitution should focus on the basic constitutional principals in historical, comparative, and global perspectives. Every critical issue of U.S. constitutional history can be reduced to the question of how to balance power and liberty in government. The paradoxical relationship of majority rule with minority rights is a special instance of how to balance power and liberty in a government that is both strong and limited. In a free government there are inherent tensions between power and liberty, majority rule and minority rights, the claims of the individual, and counter claims of the community. These tensions inevitably raise issues that could result in constitutional changes. In responding to these issues of change, a major responsibility of U.S. citizens is to conserve the constitutional values and principles that have served the nation. (SM)

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THE U.S. CONSTITUTION IN TODAY'S WORLD

by

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THE U.S. CONSTITUTION IN TODAY'S WORLD

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Welcome to The Jefferson Meeting on the Constitution! As participants in the "Jefferson Meeting" you will reflect upon and exchange ideas about the world's most successful frame of government. Unlike other nations we Americans have lived continuously, for more than two hundred years, under the principles of one document, the oldest written Constitution in today's world.

The distinction of our constitutional achievement is suggested by the story of the young man who goes to the library and asks the librarian if he might borrow a copy of the French constitution. "I'm sorry sir," says the librarian, "We don't permit anyone to check out periodicals from this library."

The first constitution of France was drafted in 1791--four years after the American Constitutional Convention in Philadelphia. Since then, the French have had several constitutions, at least 10 by my unofficial count. During this same span of time, we Americans have had one enduring and widely-respected Constitution. That is something to be very proud of, especially when we place our constitutional achievement in historical and comparative perspective, which I recommend as you approach discussion of constitutional issues in this "Jefferson Meeting" and in the classroom with your students.

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The U.S. Constitution in Comparative and Historical Perspective

By viewing our Constitution historically and comparatively, we see that the American constitutional achievement is extraordinary and the the French experience is typical. There are more than 170 constitutions in today's world, and only 11 of them, including the U.S. Constitution, predate World War II.

The average nation has had two constitutions since 1945, and nearly two-thirds of the world's constitutions have been written or basically revised since 1970. Syria has had nine constitutions since 1945.

Comparative study of constitutions and governments in world history is a key to deeper understanding of our U.S. Constitution and greater appreciation of what we Americans have. Thomas Jefferson, in whose spirit we conduct our "Jefferson Meetings," learned this lesson while serving in Paris, France as the ambassador from the United States to France. In a letter to James Monroe, his friend back home in Virginia, Jefferson wrote: "Take a trip to Europe. It will make you adore your own country, its climate, its equality, liberty, laws, people, and manners. My God! How little do my countrymen know what precious blessings they are in possession of, and which no other people on earth enjoy!"

Now Jefferson was too sophisticated to overlook the imperfections of his own country. He was a sharp critic of certain provisions and omissions of the Constitution of 1787. IN 1787 AND 1788, he wrote impassioned letters to James Madison and other

American friends urging them to add a Bill of Rights to this Constitution. However, the sophisticated Mr. Jefferson also knew that the Constitution of 1787, with all its flaws, was the foundation for the freest government in the world of 1787.

Take a moment to think about the world of 1787. It was a world of monarchies and aristocracies--tyranny and despotism prevailed. There was little freedom or equality under the law, and few people participated in government anywhere in the world of 1787.

Although participation in our American government of the 1780s and 1790s was limited to white property-owning males, the proportion of Americans taking part in their government, under the Constitution of 1787, was unequalled in the world of 1787. Certainly the 1787 concept of "We the people" did not include women, or black people, or many people without property. And to our everlasting sorrow and shame, the Constitution of 1787 tacitly accepted slavery. Furthermore, state governments had the right, which they exercised, to exclude a majority of the people from participation in their national, state, and local governments.

So, by the standards of the 1980s, this Constitution of 1787 seems to be seriously flawed. However, it is a fallacy to judge the Constitution of 1787 by the standards of 1987. Judged by the standards of its own time--the only fair way to judge it--the Constitution of 1787 was an unparalleled charter of freedom. Nothing quite like it could be found anywhere else in the world of 1787, not even in the relatively enlightened countries of Western

Europe, such as England, France, Switzerland, and Holland, and certainly not in Asia and Africa.

Concepts of free government taken for granted today by Americans, and many other people around the world, were daring innovations in the world of 1787.

- o In 1787, the American republic was the only country with a written constitution.
- o Americans were the first people in the world to hold a convention for the single purpose of creating their government.
- o For the first time, anywhere in the world, the people of the United States were invited to elect representatives to meet in convention to ratify or reject a proposed constitution.
- o Principles of American constitutional government--separation of powers, a system of checks and balances, federalism, the presidency, an independent judiciary--these ideas were uniquely practiced by Americans in the world of 1787.
- o Indeed, Americans of the 1780s invented the modern idea of what a constitution is and how a people should proceed to create and establish a constitutional government.

The U.S. Constitution in Global Perspective

Since 1787, no other frame of government has had anywhere near the global impact of the U.S. Constitution, which first influenced the French and other Europeans and then spread to other parts of

the world. Albert Blaustein of the Rutgers University Law School, an expert on constitutions of the world, says, "The United States Constitution is this nation's most important export." Consider a few examples in support of this claim.

All but six countries of the world today have written constitutions, many of them influenced by the American model. This worldwide constitutional influence was exemplified for me during the 1987 Pan American Games in Indianapolis; there was a special exhibit at this athletic event that displayed constitutions of countries in the Western Hemisphere. Any casual examiner of this exhibit, as I was, could notice the extensive influence of the U.S. Constitution on these other American constitutions. Of course, the practical application of these constitutional ideas has varied considerably in terms of different national cultures.

Another notable example of our constitutional influence is the Universal Declaration of Human Rights, adopted by the United Nations in 1948 and drafted primarily by the delegate from the United States, Eleanor Roosevelt. These civic ideals are enshrined even in constitutions of nations where the government fails to observe them consistently or fairly. This is powerful evidence of the universal appeal of civil liberties and rights associated with the founding of the United States.

Some of the most repressive regimes in the world today have constitutions with grand words about popular government and freedom and equality before the law. Nonetheless the civil liberties and rights that we Americans often take for granted have little or no

meaning in the day-to-day operations of these despotic governments. By contrast, the American constitution is a practical instrument of government--one of the minority in the world today that really guards liberties of individuals against tyranny and that effectively limits the power of government to protect the liberties and rights of individuals.

This point has been made very nicely by an immigrant from the Soviet Union (Jakov Smirnoff) who has asked: "What's the difference between a good constitution and an excellent constitution?" His answer: "A good constitution guarantees freedom of speech. An excellent constitution guarantees freedom after speech."

As indicated by this question and answer, there is a great difference between merely having a constitution and also having a constitutional government. A constitutional government actually puts the grand principles of a written document into practice in the daily lives of people. Furthermore, a constitutional government actually limits the powers of government officials to protect basic freedoms and rights of the people.

The United States is among a minority of nations in today's world that has a constitutional government. Most countries merely have constitutions that provide little or no practical protection of individual rights and liberties. These "paper constitutions" may say that freedom of speech is guaranteed, but they do not actually protect the freedom of individuals who may speak or write unpopular ideas or who seriously criticize government officials.

The Paradox of Constitutional Government

As you participate in this "Jefferson Meeting" and teach about political issues in your classrooms, remember to think and talk about principles and values of the Constitution in historical, comparative, and global perspectives. By doing so, you and your students will temper your judgments and more fully appreciate the practical and symbolic value of our U.S. Constitution. In particular, these three perspectives--historical, comparative, and global--may provide insight on how we Americans have effectively responded (more or less) to the paradox of constitutional government--establishment and maintenance of a strong government that is also strictly limited by law.

Most governments of our world--in the past and present--have been very effective in maintaining order and providing at least a minimally acceptable level of security for most people living under the government's authority. However, relatively few governments of our world, in the past or present, have turned the difficult political trick accomplished by the Framers of our Constitution, which is to create a government that is both powerful and limited. An effective and successful constitutional government is neither too powerful nor too limited; rather, there is a workable balance between power needed to maintain order and security for the people and limits on those powers to guarantee the civil liberties and rights of the people.

James Madison expressed this idea better than anyone before or

since his time in The Federalist Papers--that brilliant classic on American constitutional government. In The Federalist (No. 51) Madison wrote: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself." (By the way, The Federalist Papers are a rich, but often neglected, source of ideas that can be used to enhance reflection and discourse on constitutional issues in a "Jefferson Meeting" or a classroom seminar; I strongly recommend that you expose your students to these essays, which Thomas Jefferson lauded as "the best commentary on the principles of government which was ever written.")

The great success of our constitutional government turns on this idea that is so eloquently expressed by Madison in The Federalist 51: the critical importance of establishing a workable government that is both sufficiently powerful and sufficiently limited, so that the security of the people is maintained against internal and external threats, and so that the liberties and rights of the people are guarded against tyranny in any form.

From 1789 until today, we Americans have been challenged by Madison's principle of a strong government that is also strictly limited by law. At what point, and under what circumstances in the power of the government too strong for the liberties and rights of

the people? And at what point, and under what circumstances, is the government too weak to maintain security and order and even its own existence? How do we keep the government from becoming too powerful or too weak? In my view every critical issue of our constitutional history can be reduced to these questions about how to balance power and liberty in government. Thus, participants in a "Jefferson Meeting" or a classroom seminar on constitutional issues and change should make judgments in terms of this challenging paradox: the need to balance and blend power and liberty in an energetic but limited government.

From establishment of our constitutional government in 1789 until today, "We the People" have responded to these questions in the spirit of popular and free government. We have used our Constitution as a seedbed of democracy, and across two hundred years of American constitutional history, freedoms and rights of individuals have grown, but always in terms of the basic principles of the Constitution of 1787--and usually in an orderly way, according to the rule of law.

Thus, that glorious phrase--"We the People"--means so much more today than when it was written. But the basic principles of our constitutional government, which is designed to balance power and liberty--these principles of 1787 continue to be the keys to our constitutional government today. But the growth of constitutional democracy--popular participation of citizens in their government--has accentuated a perennial threat to individual rights under government by the people--the tyranny of the majority.

Long ago, James Madison warned his fellow citizens that their new constitutional government, while promising unprecedented freedoms to the people, also posed wholly new dangers to the rights and liberties of individuals. For instance, in a letter to his dear friend, Thomas Jefferson, Madison wrote: "Wherever the real power in a government lies, there is the danger of oppression. In our Governments [federal and state govrnments of the United States] the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents. This is a truth of great importance, but not yet sufficiently attended to. . . ."

Madison was worried about the tendency of Jefferson and other proponents of democracy to idealize and even reify the will of the people as reflected by majority opinion. But, Madison warned, mere faith in democracy, in the goodness and justness of the popular will, is no guarantee of free government in which the rights and liberties of all individuals--even to the least popular one--are protected. Instead, Madison argued for the carefully devised limits on the popular will, which structure our Constitution, so that we have a government that reflects majority rule while protecting minority rights.

By the time he became President of the United States, Thomas Jefferson had come around fully to the Madisonian position on the necessity of balancing majority rule with minority rights in

order to have a free government. In his memorable first inaugural address President Jefferson said: "All . . . will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression." I might add, it would be the oppression of democracy, but oppression nonetheless. Consider for a moment, all the oppression and tyranny in today's world that is perpetrated in the name of democracy--in so-called "People's Republics"--in which the single political party claims to rule on behalf of the will of the people, and woe to those individuals or groups that do not entirely conform to the Party's view of the general will.

In contrast to these democratic despotisms of our modern world, citizens of a free government are challenged to achieve and maintain a workable balance between the often conflicting claims of majority rule and minority rights. Thus, in a "Jefferson Meeting" or in a secondary school classroom, you, your peers, and your students must continually confront decisions about the limits of majority rule and the limits of minority rights and the appropriate balance between these two ideals. This paradoxical relationship of majority rule with minority rights is a special instance of the more basic paradox of our constitutional democracy--how to balance power and liberty in a government that is both strong and limited.

Concluding Recommendations for Jefferson Meeting Participants

In a truly free government, decisions about constitutional issues and change are inescapable. There are inherent tensions between power and liberty, majority rule and minority rights, the claims of the individual and the counter claims of the community; these tensions inevitably raise issues that could result in constitutional changes. In responding to these issues of change, a major responsibility of "The People"--of you and me--is to conserve the constitutional values and principles that have served us so well and also to improve upon their application in the daily lives of all Americans.

Then and now, in the time of our Founding Fathers and Founding Mothers and in our own time, the timeless principles and values of a free government are relevant to the needs of our people. In a "Jefferson Meeting," in our classrooms, and in the civic world outside the school, these basic principles and values of our Constitution should be used as criteria by which to make judgments and resolve issues. So, in responding to constitutional issues, you and your students should avoid dualistic and extremist ways of thinking that could compromise or destroy our core civic values. Rather, strive to find a balance among contending ideas, such as majority rule with minority rights, and to think in terms of more or less and NOT either/or--this has been and is the American way of dealing with issues of constitutional change.

A charming verse from A Book of Americans by Rosemary and Stephen Vincent Benet reminds us of how to proceed:

Jefferson said, "The Many!"
Hamilton said, "The Few!"
Like opposite sides of a penny
Were these exalted two.
If Jefferson said, "It's black sir!"
Hamilton cried, "It's white!"
But twixt the two, our Constitu-
tion started working right."

In our roles as participants in a "Jefferson Meeting," as secondary school teachers, and as public-minded citizens, we should heed the advice of this verse in our debates about constitutional issues--seek the middle way of balance between opposites, acknowledge the value of limits, and avoid the temptations of extremist responses. Remember to make judgments in terms of the core values of a free government. Furthermore, we should always remember to use historical, comparative, and global perspectives to think about and judge our constitutional government in terms of the realities and practicalities of today's world. By following these recommendations, we will be acting to conserve our nation's constitutional foundation as we endeavor to improve it through reflection, deliberation, and constructive civic action.

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